

Award No. 262

Docket No. 243

2-MP-CM-'38

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John A. Lapp when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That J. F. Farley be reinstated with seniority rights unimpaired and compensated for any loss of wages that his seniority would have entitled him to, subsequent to his dismissal from service April 21, 1937.

EMPLOYES' STATEMENT OF FACTS: On April 16, 1937, bulletin No. 71 was posted at McGehee, Arkansas, reading as follows:

"McGehee, Ark. April 16, 1937.

BULLETIN No. 71

All Carmen:

Effective 7:00 A. M. April 21, 1937, the following reduction in forces will be made at McGehee, Ark.

1 Car Inspector, rate 71¢ per hour.

J. W. Goodwin,
Car Foreman

CC-Mr. J. P. Roquemore
CC- A. G. Morrison."

J. F. Farley, being the youngest car inspector and working on third shift from 11:00 P. M. to 7:00 A. M., was the party affected. In line with above bulletin, and on the completion of his assignment at 7:00 A. M. April 21, he checked out in the customary manner required of all laid-off employees, that is, turn in all tools and other company property that may be in his possession, subsequently leaving company property, and crossing Railroad Avenue, the division street between Railroad and city property. About 7:30 A. M., J. F. Farley and a former acquaintance purchased a half pint of whiskey in a state legalized liquor store, together, and with the aid of a bottle of coca-cola, they consumed about two-thirds of the half pint of whiskey, thereafter both retiring to a location where railroad employees usually congregate during off-duty hours. About this time Assistant Superintendent Wicker walked down the street, and, noticing the whiskey bottle which was setting close to J. F. Farley, questioned the latter regarding same, also his companion. He then had both of them report to his office, at which time he verbally notified J. F. Farley that he was taking him out of service.

On April 22, 1937, Assistant Superintendent Wicker wrote J. F. Farley requesting him to report to his office for investigation at 1:30 P. M., April

The evidence discloses that Farley drank some liquor immediately after he had been indefinitely furloughed. Whether he was under the influence of liquor or not is immaterial since, under the employment agreement, the drinking of liquor or presence in a place where liquor is sold, would be a violation of the employment agreement. The issue, then, is on the question whether the carrier had the right to discharge Farley for drinking, when he was off duty on an indefinite furlough, and wholly unrelated to the business of the carrier.

First, it is necessary to consider whether this Division has jurisdiction, under the terms of the Act, which provides that the National Mediation Board shall handle disputes concerning "changes in rates of pay, rules, or working conditions not adjusted by the parties in conference." The rule in question is a carrier's operating rule and is not the sort of rule referred to in the Act. The Act plainly intended that the term "rules" meant those that were worked out by joint agreement. The National Railroad Adjustment Board has jurisdiction over grievances and, in this case, the discharge of Farley, because he drank liquor in violation of the employment agreement, is a grievance. This Division has jurisdiction of this matter as a grievance under the Act and we come to the question whether the carrier could properly discharge Farley for drinking intoxicating liquor when he was on furlough, not on company property and not acting in relation to the carrier. That the carrier would have the right to lay down rules governing drinking or intoxication, while in service or on company property or in such place or manner as would have a direct effect on the carrier's business, there can be no doubt. On the other hand, it is equally clear that the discharge of a man for drinking in a place and manner wholly unrelated to the business of the carrier, and not in any way directly affecting the carrier, cannot be sustained.

If the carrier could discharge a man for this reason, the carrier could put into its employment agreement anything that it saw fit to put in and employment and seniority rights might be reduced to a nullity if the carrier saw fit to exercise its power of discharge arbitrarily.

The employment agreement quoted must be considered as limited to actual employment and not to the employes when they are off duty, off company property, furloughed, or on leave of absence, and in no way affecting the business of the company. To hold that the carrier could do otherwise would make an absurdity of seniority, the most valued possession of an employe. Under such an interpretation, a man with years of seniority might be discharged for taking a glass of liquor in a public or a private place, or even frequenting a place where liquor is sold. The discharge of a man for such a reason cannot be sustained in equity.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 29th day of September, 1938.